

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4880 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HIRABHAI HALUBHAI RABARI

Appearance:

Mr V M Pancholi, AGP for Petitioner
MR MA MEMON for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 19/07/2000

ORAL JUDGMENT (per Kadri, J.)

The appellant by way of filing this appeal under
Section 56 of the Land Acquisition Act, 1894 (for short

'the Act') read with Section 96 of the Code of Civil Procedure, 1908, has challenged the judgment and award dated April 26, 1996 passed by the learned Extra Asstt.Judge, Mehsana in LAR No.1310 of 1988.

2. The agricultural lands of the respondent situated at village Satalasana were placed under acquisition for the public purpose of Dharoi Canal Project by notification issued on July 15, 1971 Corrigendum of the notification was published on August 18, 1973. After following the usual procedure under the Act, the Land Acquisition Officer offered compensation of the acquired lands by his award dated March 25, 1976 at the rate of Rs.3300/- per Acre for irrigated lands and Rs.2300/- per Acre for non-irrigated lands and Rs.40/- per Acre for Khraba land.

3. The claimants feeling aggrieved by the compensation offered by the Land Acquisition Officer, filed application under section 18 of the Act requiring the Land Acquisition Officer to refer their applications to the District Court, Mehsana for determination of the market value of the acquired lands. The said application was referred to the District Court wherein it came to be numbered as LAR No.1310/88. Before the Reference Court, the claimant claimed compensation for the acquired lands at the rate of Rs.5/- per sq. metre. In support of his claim, the claimant Rabari Hirabhai Halubhai examined at Exh.23. He produced documentary evidence in the nature of 7/12 extracts and copy of previous award rendered in LAR Nos. 1415 to 1425 of 1988 dated March 25, 1976. By the said previous award Exh.24, the Reference Court had determined the market value of the acquired lands of the same village Satalasana at the rate of Rs.5/- per sq. metre i.e. Rs.500/- per Are. The Reference Court by placing reliance on the previous award Exh.24, determined the market value as on July 15, 1971 at the rate of Rs.5/- per sq. metre which has given rise to filing of this appeal by the State of Gujarat. Learned Counsel for the appellant and respondent have taken us to the entire proceedings of the Reference Court. Determination of market value of the acquired lands of village Satalasana has already been determined by the High Court in respect of same notification in a group of Appeals filed by the State being F.A. No.4470/97 and allied First Appeals wherein the High Court (Coram: Y B Bhatt & C K Buch, JJ.) by judgment dated 6.5.1998 had determined the market value at the rate of Rs.258/- per Are. In view of this, we are of the opinion that this appeal deserves to be allowed. It is not brought to our notice that the judgment of the High Court rendered in FA No.4470 to 4481

of 1997 was challenged in the Supreme Court. Therefore, we are of the opinion that determination of the market value as on July 15, 1971 at the rate of Rs.258/- per Are had become final. The present acquired lands and the acquired lands of previous award Exh.24 i.e. the lands which were the subject matter of FA No.4470/97 are situated in the same village Satalasana. Therefore, the judgment of the High Court rendered in FA No.4470/97 and allied matters is relevant and comparable for the determination of the market value of the present acquired lands. Therefore, this appeal deserves to be partly allowed. The market value of the acquired lands of the respondent situated in village Satalasana is determined as on July 15, 1971 at the rate of Rs.258/- per Are. The claimant-respondent shall be entitled to solatium at the rate of 30% and interest as per amended provisions of the Act.

4. As a result of the foregoing discussion, this appeal is partly allowed. The market value of the acquired lands situated in village Satalasana is determined at Rs.258/- per Are. The claimant shall be entitled to solatium and interest as per the provisions of the amended Act. However, it is clarified that the claimants shall not be entitled to interest on the amount of solatium as per the decision of the Supreme Court in the case of Prem Nath Kapur v. National Fertilizers Corporation of India (1998(2) SCC 71). The appellant is directed to deposit the additional awarded amount including amount of solatium and interest in the Reference Court within three months from today. There shall be no order as to costs.

Office is directed to draw decree in terms of this judgment.

(M H Kadri, J.)

[D P Buch, J.]

msp.